

14/AEDER



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Urethane Products Corporation

**File:** B-234694

**Date:** May 25, 1989

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### **DIGEST**

1. An "NSP" (not separately priced) notation for a line item clearly equates with zero dollar costs and indicates the bidder's affirmative intention to obligate itself to provide the item at no charge to the government. A bid should not be rejected when NSP is inserted.
2. The General Accounting Office will not review an affirmative responsibility determination absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.
3. A challenge to the contracting agency's determination that the protester's second-low bid was nonresponsive is academic, and therefore is dismissed, where the protester has presented no basis on which to disturb the award made to the low bidder.

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### **DECISION**

Urethane Products Corporation protests the determination that it submitted a nonresponsive bid in response to invitation for bids (IFB) No. N00019-88-B-0010, issued by the Naval Air Systems Command, Department of the Navy, for AIM-9M Sidewinder Missile Dome Protector Assemblies. The bid was determined to be nonresponsive because Urethane failed to insert a bid price for three data line items. Urethane contends that the determination was erroneous because, even though it did not include these three prices, it did provide the unit and total price for the entire production quantity and for supplying first articles for government testing, and thus there could be no doubt as to whether or not Urethane would perform the work. The protester also argues that the awardee's bid is not responsive because that firm did not provide specific prices for data items and challenges the awardee's responsibility.

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We deny the protest in part and dismiss it in part.

In response to the solicitation, NAVAIR received six bids. The awardee, Foam Molders and Specialties, Inc., was the apparent low bidder at \$139,673.60. Urethane's bid of \$143,931.80 was second low. All bids were forwarded to a Procurement Review Board, which determined that three of the bids were nonresponsive for failure to price data items. Urethane's bid was one of the bids determined to be nonresponsive because it did not provide any price for three of the data items: technical data for the dome protector assemblies; administrative/financial data; and technical data for the quality assurance requirements. Foam Molders inserted the notation "NSP" on its bid schedule for all four data items.

The Navy informed Urethane that its bid was nonresponsive and that award of the contract had been made to Foam Molders. Urethane protested to the agency and to our Office after its agency-level protest was denied. Urethane contends that the pricing information that the agency wanted was not required because Urethane provided the unit and total price for the dome protector assemblies and for supplying first articles. Urethane also questions the responsibility of Foam Molders and, in its comments to the agency report, argues for the first time that the awardee's bid was not responsive because it did not provide "accurate pricing information" for the data line items since the entry of "NSP" "could mean anything, such as: no set price, no special price, no specific price, etc."

In that regard, the protester has challenged both the responsiveness of Foam Molders' bid and that firm's responsibility. The first argument may be untimely and, in any event, is clearly without merit, and the second does not fall within our standards for review. Because we therefore have no basis to disturb the award to the lower bidder we decline to consider, as academic, Urethane's protest of the Navy's determination that its bid was nonresponsive.

The record shows that by letter dated January 18, 1989, the Navy advised Urethane that its bid was not evaluated for award since it was nonresponsive for failure to price three data items, and that the Navy had awarded the contract to Foam Molders. Nevertheless, it was not until April 21, when the protester filed with our Office its comments on the Navy

report,<sup>1/</sup> that it alleged that Foam Molders' entry of "NSP" on the bid schedule rendered its bid nonresponsive. We have some doubt under these circumstances whether the argument is timely, i.e., filed within 10 working days of when it was known or should have been known. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). In any event, Urethane's contention that Foam Molders' use of the "NSP" notation is not responsive to the solicitation because it is open to several interpretations is without merit. An NSP notation clearly equates with zero dollar costs and indicates the bidder's affirmative intent to obligate itself to provide the item at no charge to the government. We have held that a bid should not be rejected when "NSP" (not separately priced) is inserted. AUL Instruments, Inc., B-220228, Sept. 27, 1985, 85-2 CPD ¶ 351.

Next, Urethane challenges Foam Molders' responsibility, contending that Foam Molders has not demonstrated the ability to produce the items under a previously-awarded contract and, therefore, it is not in the best interests of the government to award it this contract. This contention is not for our review. Our Office does not review an affirmative responsibility determination absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(f)(5); Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235. None of these exceptions has been alleged here.

Accordingly, we deny the protest in part and dismiss it in part.

  
James F. Hinchman  
General Counsel

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<sup>1/</sup> In this connection, we note that Urethane filed a Freedom of Information Act request for a copy of Foam Molders' bid, but it is not clear from the record when the request was complied with.